

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE DISTRICT OF NEW MEXICO UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**METROPOLITAN PROPERTY & CASUALTY
INSURANCE CO., f/k/a ECONOMY PREFERRED
INSURANCE COMPANY,**

05 SEP 19 PM 3:54 *jm*

CLERK-ALBUQUERQUE

Plaintiff,

vs.

CIVIL NO. 04-1069 BB/RLP

FRANK F. JANZAD,

Defendant.

PLAINTIFF'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW. Plaintiff Metropolitan Property & Casualty Insurance Co., f/k/a Economy Preferred Insurance Company, by and through its attorneys of record, Hatch, Allen & Shepherd, P.A., and pursuant to Court Order, files Plaintiff's Findings of Fact and Conclusions of Law.

PLAINTIFF'S REQUESTED FINDINGS OF FACT

1. Faye Janzad is Frank Janzad's sister.
2. Faye Janzad owns property located at 5709 Teakwood Trail NE, Albuquerque, New Mexico 87111.
3. Faye Janzad asked Economy Preferred Insurance Co. to insure a 1980 Toyota Corolla, VIN #TE720532114, on March 7, 1995.
4. Faye Janzad continued to insure a 1980 Toyota Corolla, VIN #TE720532114 until March 29, 1996.
5. Faye Janzad was not the registered owner of a 1980 Toyota Corolla, VIN #TE720532114 on March 28, 1996.

6. On March 28, 1996 Faye Janzad was insuring a vehicle she did not own.
7. On March 28, 1996 while driving a 1980 Toyota Corolla, VIN #TE720532114, Frank Janzad was in an automobile accident.
8. On March 28, 1996 Frank Janzad was the owner of the 1980 Toyota Corolla, VIN #TE720532114, he was driving at the time of the accident.
9. The Albuquerque Police Department responded to the accident scene and completed a State of New Mexico Uniform Accident Report #0353297.
10. The New Mexico Uniform Accident Report #353297 lists Frank Janzad's address as 2800 Vail SE, #163, Albuquerque, NM 87108 and his telephone number as 843-8445.
11. An Albuquerque Ambulance Patient Report #234481-1, completed at the accident scene, lists Frank Janzad's home address as 2800 Vail SE, #163, Albuquerque, NM 87108 and his phone number as 843-8445.
12. A University Hospital, UNM Health Sciences Center Emergency Treatment Log #450509 and dated March 28, 1996, lists Frank Janzad's address as 2800 Vail SE, #163, Albuquerque, NM 87108 and his phone number as 843-8445.
13. A University Hospital, University of New Mexico Eye Outpatient Treatment Log, dated March 28, 1996, lists Frank Janzad's address as 2800 Vail SE, #163, Albuquerque, NM 87108 and his phone number as 843-8445.
14. On March 29, 1996 Faye Janzad added Frank Janzad, as an insured driver, to her Economy Preferred Insurance Company Combo Policy No. VH 30 500851.
15. On April 1, 1996 Frank Janzad completed a State of New Mexico Uniform Accident Report #0535814 (Station Report) in which he changed his address to 5709 Teakwood Trail, NE. Albuquerque, NM 87111 but continued to list his phone number as 843-8445.

16. On April 8, 1996 Faye Janzad completed an Automobile Loss Notice for the March 28, 1996 accident involving Frank Janzad and identified his home phone number as 843-8445.

17. On April 9, 1996 Frank Janzad signed a University Hospital, University of New Mexico Outpatient Treatment Log, listing his address as 2800 Vail SE, #163, Albuquerque, NM 87108 and his phone number as 843-8445.

18. On April 11, 1996 Frank Janzad signed a University Hospital, University of New Mexico Medical Center Eye Outpatient Treatment Log, listing his address as 2800 Vail SE, #163, Albuquerque, NM 87106 and his phone number as 843-8445.

19. On April 12, 1996 Frank Janzad completed an information card for Life Activation Chiropractic and listed his address as 2800 Vail Ave. SE, #163, Albuquerque, NM 87106, his home phone number as 843-8445 and his work phone number as 291-8000.

20. Qwest Subscriber & Billing Information records show Frank Janzad obtained residential telephone service for 2800 Vail Ave. SE #163, Albuquerque, NM in March 1996.

21. Qwest Subscriber & Billing Information records show Frank Janzad's residential account number for 2800 Vail Ave. SE, #163, Albuquerque, NM was 505-843-8445.

22. Qwest Subscriber & Billing Information records show Frank Janzad's residential account for 2800 Vail Ave., SE #163, Albuquerque, NM remained in effect from March 4, 1996 through December 12, 1999.

23. On March 31, 1998 Frank Janzad completed a residential loan application for purchase of a condominium located at 2800 Vail Ave. SE, #163, Albuquerque, NM.

24. On March 31, 1998 Frank Janzad, for purposes of securing a residential mortgage on a condominium located at 2800 Vail Ave. SE, #163, Albuquerque, NM, certified that he had been living at 2800 Vail Ave., SE, #163, Albuquerque, NM for 2.5 years.

25. On March 31, 1998 Frank Janzad certified that he had been living at 2800 Vail Ave. SE, #163, Albuquerque, NM since October 1995.

26. On March 28, 1996, Frank Janzad was not a resident of 5709 Teakwood Trail NE, Albuquerque, New Mexico 87111.

PLAINTIFF'S REQUESTED CONCLUSIONS OF LAW

1. In this diversity action, the substantive law of the State of New Mexico applies. *Pound v. Insurance Company of North America*, 439 F.2d 1059, 1062 (10th Cir. 1971); *see also PreTrial Order* [doc. 14] at 5 (parties stipulated that New Mexico law governs this case).

2. Contract interpretation is a matter of law for the court, and insurance contracts are interpreted using the same general principles as contract interpretation. *Risk Management Division ex rel. Apodaca v. Farmers Ins. Co.*, 2003-NMCA-095, ¶ 8, 134 N.M. 188, 75 P.3d 404.

3. Faye F. Janzad and Luis A. Suarez are the only named insureds on a policy of insurance issued by Economy Preferred Insurance Company, policy number VH 30 500851 ("the Policy").

4. Frank Janzad was not a named insured on the Policy.

5. Four automobiles were listed on the Declarations page of the Policy: 1980 Mercedes, 1988 BMW, 1980 Toyota Corolla, 1990 Honda Civic.

6. Frank Janzad owned the 1980 Toyota Corolla. Neither Faye Janzad nor Luis Suarez owned the 1980 Toyota Corolla.

7. Neither Faye Janzad nor Luis Suarez had an insurable interest in the 1980 Toyota Corolla. NMSA 1978, § 59A-18-6 (1984); *see also Universal C.I.T. Corporation v. Foundation Reserve Insurance Company*, 79 N.M. 785, 450 P.2d 194 (1969); *Suggs v. State Farm Fire & Casualty Co.*, 833 F.2d 883 (10th Cir. 1987).

8. Because neither Faye Janzad nor Luis Suarez had an insurable interest in the 1980 Toyota Corolla, the Policy is not enforceable as to the 1980 Toyota Corolla. NMSA 1978, § 59A-18-6(A) (1984).

9. For purposes of uninsured motorists coverage, the Policy defines "Insured" as:
1. you [the named insured] or any family member.
 2. any person occupying your covered auto or any other auto operated by you
 3. any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in 1. or 2. above.

See Personal Auto Uninsured Motorists Amendatory – New Mexico, form CD-563-NM (7/93).

10. The Policy defines "family member" as "a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child, provided neither such family member nor such family member's spouse owns a motor vehicle." *See Personal Auto Form, form CF-185 5/91.*

11. In New Mexico, the word "resident" as used in insurance policies does not have a fixed legal definition, but varies according to the context of the case. *Risk Management ex rel. Apodaca*, 2003-NMCA-095, ¶ 10, 134 N.M. at 191; *see also American Commerce Insurance Company v. Bachicha*, 256 F. Supp. 2d 1219, 1223-1224 (D.N.M. 2003).

12. Based upon the facts of this case, Frank Janzad is not a "family member" as defined under the policy because he is not a "resident" of the named insureds' household.

13. Frank Janzad is not a "family member" as defined under the policy because he owns a motor vehicle. *See definition of "family member"* ("provided neither such family member nor such family member's spouse owns a motor vehicle.")

14. Under New Mexico law, Frank Janzad is not a Class I insured for purposes of uninsured motorists coverage, because he is not "the named insured, the spouse, [or a relative] that reside[s] in the household." *Ponder v. State Farm Mutual Automobile Insurance Company*, 2000-NMSC-033, ¶ 22, 129 N.M. 698, 12 P.3d 960 (citations omitted).

15. Because Frank Janzad is not a Class I insured, he is not entitled to stacking of insurance benefits. *Id.*

16. Under New Mexico law, Frank Janzad is not a Class II insured because the 1980 Toyota Corolla was not an insured vehicle. *Id.*

17. Because Frank Janzad is not a Class II insured, he is not entitled to benefits under the policy. *Id.*

Respectfully submitted,

HATCH, ALLEN & SHEPHERD, P.A.

By: 

Nicole M. Charlebois

Justin R. Baer

Attorneys for Plaintiff

Hatch, Allen & Shepherd, P.A.

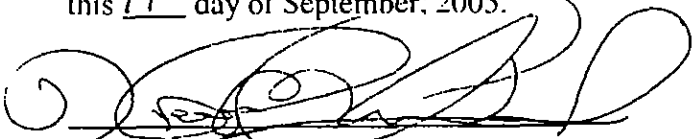
P.O. Box 94750

Albuquerque, NM 87199-4750

I hereby certify that a true copy of the
foregoing was mailed to:

M. Terrence Revo, Esq.
Revo Law Firm
10400 Academy NE, Suite 200
Albuquerque, NM 87111

this 19th day of September, 2005.

A large, stylized handwritten signature in black ink, appearing to read "Nicole M. Charlebois".

Nicole M. Charlebois
Justin R. Baer